

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JELD-WEN, INC., f/k/a Grossman's Inc.,	:	
	:	
Appellant,	:	Case No. 1:08-cv-00427-UNA
	:	
v.	:	
	:	
MARY VAN BRUNT and GORDAN	:	
VAN BRUNT,	:	
	:	
Appellees.	:	
	:	
IN RE:	:	Chapter 11
	:	Case No. 97-00695 (PJW)
GROSSMAN'S INC., et al.,	:	Case No. 97-00696 (PJW)
	:	Case No. 97-00697 (PJW)
	:	
Debtors.	:	
	:	Adv. Pro. No. 07-51602

**JOINT MOTION FOR RELIEF FROM REQUIREMENTS OF
DISTRICT COURT STANDING ORDER DATED JULY 23, 2004,
REQUIRING MANDATORY PARTICIPATION IN
MEDIATION PROCEEDINGS ON APPEAL**

JELD-WEN, inc., f/k/a Grossman's Inc., appellants in the above captioned appeal (“JELD-WEN”) and Mary Van Brunt and Gordan Van Brunt, appellees in the above captioned appeal (the “Van Brunts”), by and through their respective undersigned counsel, respectfully move (the “Motion”) for entry of an order, granting the parties to the above-captioned appeal relief from the Order Regarding Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District (the “Bankruptcy Court”), dated July 23, 2004 (the “Mediation Order”). In support of the Motion, the parties state as follows:

BACKGROUND

1. In May 2007, the Van Brunts filed a lawsuit in the Supreme Court of the State of New York, County of Erie against, *inter alios*, JELD-WEN. In the lawsuit, the Van Brunts seek to recover damages for their asbestos-related personal injuries allegedly caused by Mary Van Brunt's exposure to asbestos products she purchased at JELD-WEN. As against JELD-WEN, the Van Brunts assert five causes of action:

1) negligence; 2) breach of warranty; 3) strict liability; 4) civil conspiracy and collective liability/concert of action; and 5) spousal loss of consortium.

2. On June 29, 2007, JELD-WEN initiated an adversary proceeding in the Bankruptcy Court by filing its Complaint for 1) Permanent Injunction Enjoining Defendants' Prosecution of Claims Against JELD-WEN, inc., 2) Determination that Defendants' Claims Have Been Discharged, and 3) Award of Damages (the "Complaint"), in which it requested entry of an order (i) permanently enjoining the Van Brunts from asserting or pursuing any claims against JELD-WEN based upon any contact or relationship with JELD-WEN or any predecessor of JELD-WEN prior to January 19, 1998, (ii) declaring that the Van Brunts' claims against JELD-WEN were discharged, (iii) imposing sanctions against the Van Brunts and (iv) awarding attorneys' fees to JELD-WEN.

3. On June 9, 2008, the Bankruptcy Court entered its Judgment Order (the "Order") in which it granted judgment in favor of the Van Brunts and denied all relief requested by JELD-WEN in its Complaint.

4. On June 16, 2008, JELD-WEN commenced this appeal by filing its Notice of Appeal in the Bankruptcy Court.

5. On July 18, 2008, the parties received a Notice of Mediation (attached as Exhibit A) from Kevin F. Brady, which indicated that Mr. Brady had been assigned to act as the mediator in this appeal pursuant to the Standing Order of the Court dated July 23, 2004, and requesting to schedule a pre-mediation telephone conference with the undersigned counsel during the week of July 28, 2008.

6. The undersigned counsel each conferred with their respective clients and agreed that mediation would not serve a useful purpose in this appeal and would be an unnecessary waste of time and resources for their respective clients, for Mr. Brady and for the Court. Therefore, on July 24, 2008, the undersigned counsel sent to Mr. Brady a letter (attached as Exhibit B) under both of their signatures indicating to Mr. Brady that the parties wish to by-pass the mediation process.

7. On July 29, 2008, Mr. Brady responded to counsels' July 24, 2008, letter by email (attached as Exhibit C) and indicated that he lacked authority to agree to a modification of the mandatory mediation process and requested that the parties petition this Court for relief.

RELIEF REQUESTED

8. By this Motion, the parties seek relief from the Mediation Order on the grounds that mediation would serve no useful purpose in this instance. Specifically, there is no dispute for a mediator to resolve because the only issues on appeal are the purely legal issues set forth in the statement of issues on appeal filed by JELD-WEN. Such issues must be determined by this Court and cannot be resolved through mediation.

9. Furthermore, the mediation required by the Mediation Order would cause the parties to unnecessarily incur additional expenses as they will be required to (i) draft

position papers for any mediator and (ii) prepare for and attend the required mediation session(s). The parties will also bear the burden of paying for the services of the mediator.

10. Given the futility of mediation and in order to avoid additional, unnecessary expenses being incurred by the parties, the parties respectfully request that this Court waive compliance with the Mediation Order.

BASIS FOR RELIEF

11. The parties believe that mediation is neither appropriate nor necessary because, essentially, the only issue this appeal involves is the purely legal issue of whether the Bankruptcy Court erred in concluding that the Van Brunts' claims were not discharged by JELD-WEN's 1997 bankruptcy as the claims did not arise prior to JELD-WEN's April 7, 1997, petition date.

12. Bankruptcy Rule 8019 provides that this Court may suspend the requirements or the provisions of the Bankruptcy Rules governing appeals of orders of bankruptcy courts and may order other proceedings in accordance with this Court's direction "in the interest of expediting decision or for other cause." FED. R. BANKR. P. 8019.

13. In this instance, cause exists to grant the relief requested herein. Given that the purely legal issues on appeal cannot be resolved through mediation, the parties do not believe that they should be compelled to bear the unnecessary expense and delay that mediation would entail.

14. In addition, granting the requested relief from the Mediation Order would greatly expedite the Court's decision in this appeal. For this reason as well, granting the relief requested herein is appropriate under Bankruptcy Rule 8019.

WHEREFORE, the Appellant and the Appellees jointly request that this Court enter an order (i) granting the parties to this appeal relief from the Mediation Order, (ii) authorizing the appeal to proceed before this Court without mediation, and (ii) granting such further relief as may be just and proper.

Dated: July 30, 2008

/s/ Frederick B. Rosner

Frederick B. Rosner (DE 3995)
DUANE MORRIS LLP
1100 North Market Street, Suite 1200
Wilmington, DE 19801
Telephone: (302) 657-4900
Facsimile: (302) 657-4901

-and-

FOSTER PEPPER, PLLC
Christopher M. Alston
111 Third Ave., #3400
Seattle, WA 98101
Telephone: (206) 447-4400
Facsimile: (206) 447-9700

**COUNSEL FOR APPELLANT JELD-
WEN, INC.**

/s/ Daniel K. Hogan

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-and-

STUTZMAN, BROMBERG, ESSERMAN
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Facsimile: (214) 969-4999

**COUNSEL FOR APPELLEES MARY
VAN BRUNT AND GORDAN VAN
BRUNT**

EXHIBIT A



CONNOLLY BOVE LODGE & HUTZ LLP

ATTORNEYS AT LAW

Kevin F. Brady
Partner
TEL (302) 888-6257
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REPLY TO Wilmington Office

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TEL: (302) 658 9141
FAX: (302) 658 5614
WEB: www.cblh.com

July 18, 2008

Frederick B. Rosner, Esquire
Duane Morris LLP
1100 N. Market Street, Ste. 1200
Wilmington DE 19801

Daniel K. Hogan, Esquire
The Hogan Firm
1311 Delaware Avenue
Wilmington DE 19806

Re: Appeal: In Re: JELD-WEN v. Van Brunt, et al.
Case No. 1:08-cv-00427-UNA

NOTICE OF MEDIATION

Dear Counsel:

In accordance with the provisions of the Standing Order of the Court dated July 23, 2004, (the "Standing Order"), I have been assigned to act as the Mediator in the captioned matter.

In order to schedule the date, time, number of hours allotted for the mediation and to discuss matters relating to the mediation itself, I will conduct a pre-mediation telephone conference sometime during the week of July 28, 2008. Please advise me by email or telephone of your available dates that week. At that conference, I hope to set a schedule for the parties to submit their respective confidential position paper of no more than ten (10) pages consistent with the provisions of the referenced Standing Order at Paragraph 5(1).

As you know, mediation is a non-binding process in which an impartial, neutral third-party (the Mediator) facilitates communication between the parties to a dispute in an effort to assist the parties in reaching a mutually acceptable and voluntary settlement of their dispute and to ensure that the parties memorialize whatever settlement they may have reached in a written settlement agreement. As a third-party neutral, the Mediator does not, and I will not represent any party to the dispute. My service as a Mediator in this matter does not create an attorney/client relationship between me or Connolly Bove Lodge & Hutz LLP ("Connolly Bove"), on the one hand, and any of the parties to the dispute, on the other hand. Please explain to your clients my role as a Mediator in these matters and have them confirm to me *in writing* that they understand my role and will not assert that my serving as a Mediator or my access to confidential information about them in that connection is a basis for disqualifying Connolly Bove from representing another of its clients in any matter in which your client(s) or any other party has an interest or constitutes a breach of any duty owed to that party.

By participating in the mediation process, the parties and their counsel agree to cooperate and participate in good faith in the mediation. This does not mean that any party is required to compromise its position, or ultimately to settle the dispute. It does require, however, that each party cooperate with each other and with the Mediator in a good faith effort to negotiate a prompt and reasonable resolution of the dispute. Pursuant to Paragraph 5(b) of the Standing

July 18, 2008
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Order, unless I direct otherwise, the mediation must be attended by the senior lawyer for each party and by the person or persons with actual authority to negotiate a settlement of the case.

The mediation process shall be treated as a compromise or offer to compromise for the purpose of Rule 408 of the Federal Rules of Evidence and any applicable State Rules of Evidence. Pursuant to the Paragraph 5(c) of the Standing Order, the Mediation shall be and shall remain completely confidential.


I will charge for my time in preparing for and conducting the mediation at my current hourly rate of \$515.00 per hour, plus any reasonable disbursements and other charges incurred in the performance of my services. Pursuant to Paragraph 5(e) of the Standing Order, one-half of such fees and expenses shall be paid by the appellant(s) and one-half of such fees shall be paid by the appellee(s).

Contemporaneously with the filing of the confidential position paper, the appellant and the appellees shall advance the sum of \$1,000 payable to *Connolly Bove Lodge & Hutz LLP* (Fed. I.D. No. 51-0095196) for each side. Said advance will be deposited in our general trust account. I will charge my fees and related charges against the advance and credit them on my billing statements. In the event my fees and charges exceed the advance deposited with us, I will bill you for the excess. Any unused portion of the advance will be returned to you at the conclusion of my services. ***Please do not send copies of any correspondence involving this mediation to the Clerk's office to avoid the docketing of a letter which contains confidential information.***

Please sign the enclosed acknowledgment page where indicated and return same to me as soon as possible.

I look forward to working with you in this matter.

Yours very truly,



Kevin F. Brady

KFB/gm
Enclosures
623643_1

***Re: Appeal: In Re: JELD-WEN v. Van Brunt, et al.
Case No. 1:08-cv-00427-UNA***

On behalf of my client who is a party to the above-referenced appeal, I acknowledge the provisions of the Standing Order of the Court dated July 23, 2004 (a copy of which is attached hereto). I also acknowledge and agree to be bound by the terms set forth herein above.

Dated: _____

Daniel K. Hogan, Esquire
Counsel for Mary and Gordon Van Brunt

EXHIBIT B

July 24, 2008

Direct Phone (206) 447-2906
Direct Facsimile (206) 749-1904
E-Mail AlstC@foster.com

VIA E-MAIL

Kevin F. Brady, Esq.
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 N. Orange St.
Wilmington, DE 19899

Re: Appeal in JELD-WEN v. Van Brunt, Case No. 1:08-cv-00427-UNA

Dear Mr. Brady:

The undersigned are counsel for all of the parties in the above-referenced appeal. We are writing in response to your Notice of Mediation dated July 18, 2008.

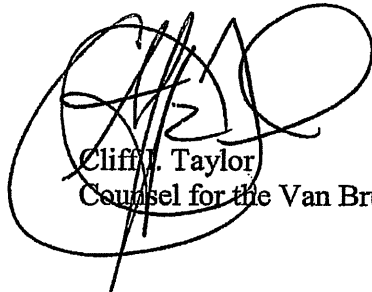
The parties do not believe that mediation will be productive. JELD-WEN, Inc., the plaintiff/appellant, commenced the adversary proceeding from which this appeal is made to determine whether the tort claims of defendants/appellees Mary and Gordan Van Brunt were discharged in the debtors' bankruptcy case and to seek damages from the Van Brunts for violation of the discharge. Because the bankruptcy issues on appeal do not involve JELD-WEN's potential liability for any such claims (which issues are currently being litigated in the State of New York), JELD-WEN will not offer any amount to settle this appeal. And as the prevailing parties, the Van Brunts also do not intend to offer any amount to settle this appeal. Given positions of the parties, they have agreed that mediation would not be useful and would only be an unnecessary expense for both sides.

Accordingly, the parties contend that this case is not appropriate for mediation, and would like to bypass the mediation process. You are hereby authorized to convey this letter to the appropriate District Court authorities.

Sincerely,



Christopher M. Alston
Counsel for JELD-WEN, inc.



Cliff Taylor
Counsel for the Van Brunts

cc: Frederick B. Rosner, Esq.
Daniel K. Hogan, Esq.

EXHIBIT C

Cliff I. Taylor

From: Kevin F. Brady [KBrady@cblh.com]
Sent: Tuesday, July 29, 2008 12:37 PM
To: Christopher Alston
Cc: Cliff I. Taylor; Daniel K. Hogan; Rosner, Frederick B.
Subject: RE: Letter re Notice of Mediation in JELD-WEN v. Van Brunt

Counsel, I have your letter asking to bypass the mediation process. While I understand your situation, I do not have the authority to agree to that modification to the mandatory mediation process so you will need to petition the Court for the relief. Please keep me updated as to any petition you might file. Thank you. Kevin Brady

Kevin F. Brady, Esquire
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
P. O. Box 2207
Wilmington, DE 19899
(302) 888 - 6257 (Direct Dial)
(302) 255 - 4257 (Direct Fax)
KBrady@cblh.com

From: Christopher Alston [mailto:AlstC@foster.com]
Sent: Thursday, July 24, 2008 5:38 PM
To: Kevin F. Brady
Cc: Cliff I. Taylor; Daniel K. Hogan; Rosner, Frederick B.
Subject: Letter re Notice of Mediation in JELD-WEN v. Van Brunt

Mr. Brady, enclosed is a letter regarding the above matter. Thank you for your time and consideration.

Christopher M. Alston
FOSTER PEPPER PLLC
1111 Third Ave., Suite 3400, Seattle, WA 98101-3299
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7/29/2008

2. The parties are hereby granted relief from the Order Regarding Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District, dated July 23, 2004 (the “Mediation Order”).
3. The above-captioned appeal shall proceed before this Court without mediation, provided, however, that this Order shall not affect or be deemed to constitute a ruling on any of the parties’ substantive arguments with respect to this appeal.
4. This Court shall retain jurisdiction to hear and determine all matters arising from the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
_____, 2008

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the persons identified below via CM/ECF and/or electronic mail on the 30th day of July, 2008.

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Frederick B. Rosner
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Counsel to Debtor Jeld-Wen, Inc. f/k/a Grossman's Inc.

Dated: July 30, 2008

/s/Daniel K. Hogan
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